

## **MUSIC IN FILM**

**By Charles F. Morgan, Esq.**

Let's start by recognizing that there are a lot of variations in making a deal for music in a theatrical film. For example, the director or producer may be interested in having a particular artist perform music in a film, or the deal may be for use of a song only, and it may be an existing song or one created specifically for the movie. The film may also need background music known as the underscore, or the score, written by a composer hired by the film company. Apart from the film, there may be a soundtrack album and other uses for the music. This article addresses only the use of existing music in theatrical films not made especially for television.

The music for most films today is coordinated by a music supervisor. He or she is responsible for contacting the people whose music has been selected by the director and producer and for negotiating the deals to put music in the film. Music producers act as liaisons between the worlds of music and film production.

An artist who writes and records his or her own music, may be contacted one day by a music supervisor who tells the artist that the director of a new film has always liked his or her music and would like to include an old song of the artist in the film. This is an ideal situation for the music supervisor since the artist controls all of the rights to his or her music. In many cases however there may be separate deals to be made with the performing artist, a publishing company and a record company just for the film company to acquire the rights to use a song in the film. In those cases the performing artist or songwriter may have a minimal role as the right to license a song for use in a film may have been granted to a record company or publisher. Remember however that the film company has to obtain both the right to the musical composition and the right to the particular recording of the song so if the artist has retained the right to either the master recording or the publishing the artist has to be involved in a deal with the film company.

The right to use a particular master recording of a song in a film is acquired by a master use license. The most important elements of a master use license are typically the territory (usually the universe), the term (in perpetuity), the nature of the use, the extent of the grant of rights and the fee for those rights. At a minimum, the music supervisor will want to establish in the agreement that the film company will pay a certain amount for use of the song in the film. The fee typically includes a buyout of all rights to use the recording in the film and in in-context advertisements in all media as well as United States theatrical performance rights and the right to release the film on DVD. The agreement may also provide for use of the song on a soundtrack

album as well as other uses. If so, a fee or royalty for such uses would be in the agreement. If not, the artist would be free to negotiate separate agreements for these uses at a later time.

When negotiating the master use license, or if the artist is asked by his or her record company for consent to a license, it is always important to determine how the song is going to be used in the film. The artist may, or may not, want to avoid scenes depicting sex, violence or drug use while the song is being played in the film. Moreover, the artist should be sure to negotiate for appropriate credit in the film which should be no less prominent than the credit given to others whose master recordings are used in the film.

The second license that has to be obtained by the music supervisor is a synchronization license for the use of the musical composition in a film. If the artist wrote the song and owns the publishing, the music supervisor has to make a deal with the artist. The fee is typically for a buyout which often is identical to the master use fee. If there is a reason for the song to cost more than the master recording however the fee does not have to be the same and can be negotiated upward such as when a well known song is covered by an unknown artist. In that case, the synch license fee will almost certainly be more than the master use license fee.

A third revenue stream for the songwriter and publisher of a song used in a film is the public performance royalty that typically is collected by BMI, ASCAP or SESAC. Whenever the song is aired in the film over a television station or in foreign (but not U.S.) theatres, performance royalties are collected and paid to the songwriter and publisher of a musical composition. It is important therefore that the licensor of a song for a film obtain a "cue sheet" from the production company and make sure that it is filed with the applicable performing rights organization so that royalties can be collected and paid out.

After a film has been released, if it is successful, there are likely to be other opportunities for revenue for the performer, songwriter and publisher such as a soundtrack album. Album deals are made between the film company and the record company, but if the song is on the artist's own label, negotiations over a soundtrack album would be with the artist.

I recently represented a songwriter and performer who licensed a song, and his recording of that song, to a film production company. The film was nominated for an Academy Award as best picture. As a result, there were two soundtrack albums, a print license deal, an agreement with a major publishing company and many other opportunities that came as a result. Licensing music for a film can be quite complex, but the results can also be quite satisfying especially when the film is a success.

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